

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BOB ROLLER,

Appellant,

V.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 81-28

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

This matter, the appeal from the issuance of a \$25 and \$150 civil penalties for the alleged violation of Section 400-040 of the Southwest Air Pollution Control Agency regulations, came before the Pollution Control Hearings Board convened at Longview, Washington on May 12, 1981, in a formal hearing. David Akana, Board member, presided. He was joined by Board member, Gayle Rothrock. Court reporter Carolyn Koinzen recorded the proceedings.

The appellant, Bob Roller, represented himself. Respondent was represented by its attorney, James D. Ladley.

1 Witnesses were sworn and testified; exhibits were examined; and
2 testimony was heard. From this the Board makes these

3 FINDINGS OF FACT

4 I

5 The appellant, Bob Roller, owns and operates Bob's Motorcycles
6 store at 1171-3rd Avenue, Longview, Washington. To heat this store,
7 appellant installed an experimental wood-fired space heater and
8 smokestack. Appellant's residence is located elsewhere.

9 II

10 On November 26, 1980, at about 11:14 a.m., respondent's inspector
11 saw a blue/gray/brown colored plume being discharged from a chimney
12 located at appellant's site. After properly positioning himself, the
13 inspector recorded an opacity of sixty percent for ten consecutive
14 minutes. The inspector notified appellant of his observations. The
15 cause of the plume was a wood-fired space heater. A field notice of
16 violation was issued to appellant for the alleged violation of Section
17 400-040 of respondent's General Regulations for Air Pollution
18 Sources. A \$25 civil penalty followed, which was received by
19 appellant on December 2, 1980.

20 An appeal from this penalty was neither filed nor perfected with
21 this Board in a timely fashion partly because appellant did not have
22 written instructions detailing the correct appeal procedures.
23 Appellant filed a letter of appeal with respondent on January 2, 1981.

24 III

25 Since discussions with a Southwest Air Pollution Control Authority

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 air pollution inspector in late November of 1980, appellant has
2 redesigned the stack and burning apparatus through various experiments
3 in an attempt to reduce air pollution emanating from the heater. His
4 degree of success, a matter pertinent to the facts of this case, has
5 varied and is in dispute.

6 IV

7 On January 21, 1981, at approximately 11:30 a.m., respondent's
8 inspector noticed a white-gray colored plume rising from the
9 appellant's store site. After positioning himself he observed the
10 plume, which was coming from the north, and recorded opacities ranging
11 from 45% to 60% for ten consecutive minutes. After an energetic
12 discussion of the matter with Mr. Roller, the inspector issued Notice
13 of Violation No. 4964. On January 23, 1981, respondent sent by
14 certified mail Notice of Violation assessing a Civil Penalty of \$150
15 for the alleged violation of Section 400-040 of respondent's official
16 regulations. This Notice of Violation and Civil Penalty is the second
17 subject of the appeal.

18 V

19 Pursuant to RCW 43.218.260, respondent filed a certified copy of
20 its General Regulations for Air Pollution Sources with the Board,
21 which is noticed. Section 400-040 of respondent's regulations makes
22 it unlawful for any person to cause, allow, permit, or suffer the
23 emission of any air contaminant for a period totaling more than three
24 minutes in any one hour, which is of an opacity equal to or greater
25 than 20%. Civil penalties of up to \$250 per violation per day are
26 provided for in respondent's regulations.

VI

Any Conclusion of Law which should be deemed a Findings of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matter of the appeal relating to the January 21, 1981 event. While the Board's jurisdiction with respect to the November 26, 1980, event was initially disputed, respondent in closing argument suggested that this Board review the penalty in its discretion.

II

The appellant did cause, allow, permit or suffer the emission of air contaminants in violation of Southwest Air Pollution Control Authority General Regulations for Air Pollution Sources, Section 400-040 on November 26, 1980, and on January 21, 1981.

III

The particular circumstances and emotions surrounding the two site visits which occasioned the instant civil penalties did not promote the understanding of the policy of the Clean Air Act and respondent's regulations. The imposition of the total amount of the civil penalties would further polarize the parties and result in less, rather than more, real comprehension of what is expected of each citizen.¹

1. For example, appellant was apparently not aware that a single family residence may burn untreated wood under the conditions provided in RCW 70.94.770; whereas, this exemption does not extend to businesses.

1 Accordingly, the civil penalties should be reduced and suspended in
2 part.

3 IV

4 Any Findings of Fact which should be deemed a Conclusion of Law is
5 hereby adopted as such.

6 From these Conclusions of Law the Board enters this

7 ORDER

8 1. The \$25 civil penalty for the violation on November 26, 1980,
9 is affirmed.

10 2. The \$150 civil penalty for the violation on January 21, 1981,
11 is reduced to \$75. Payment of \$50 of the reduced penalty is suspended
12 on condition that appellant not violate respondent's regulations for a
13 period of one year after this order becomes final.

14 DATED this first day of June, 1981.

15 POLLUTION CONTROL HEARINGS BOARD

16 David Akana

17 DAVID AKANA, Member

18 Gayle Rothrock

19 GAYLE ROTHROCK, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER